



**DOERFLINGER'S SECOND CENTURY, INC.  
DEVELOPMENT AGREEMENT**

This Doerflinger's Second Century, Inc. Development Agreement (hereafter "Agreement") is made by and among the City of La Crosse, Wisconsin, a Wisconsin municipal corporation with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 ("City"), and Doerflinger's Second Century, Inc., a Wisconsin corporation with offices located at 116 A 5<sup>th</sup> Ave. S., La Crosse, Wisconsin 54601 ("Developer").

**WITNESSETH:**

Whereas, Developer proposes to own, refurbish, renovate and develop a currently partially vacant property (former Doerflinger Building) into a more desirable downtown retail and retail support space ("Project") within the City of La Crosse on property it will own all of which property is more particularly described in Exhibit A ("Real Estate");

Whereas, the goals for the Real Estate include encouraging the attraction of sustainable retail and high impact downtown tenants and undertaking improvements that promote desirable and sustainable uses, which further serve the mission of La Crosse's City Vision 2020 Master Plan and the needs of the community and visitors as well as fulfilling the aesthetic character standards of the City;

Whereas, the City finds it necessary to further redevelop an area of the City within Tax Incremental District No. 6, ("TID #6"), in order to further redevelop an area of the City, reduce underutilized property, grow the tax base, stimulate downtown consumer activity as well as provide for a place of employment for citizens of the State and the City;

Whereas, Section 66.1105, Wis. Stat., empowers cities to assist redevelopment projects by lending or contributing funds as well as performing other actions of a character which the City is authorized to perform for other general purposes;

Whereas, the City has found and determined that: (1) the economic vitality of the Real Estate is essential to the economic health of the City and other taxing jurisdictions within the City; (2) the proposed development of the Real Estate through the construction of the Project is an integral part of the workforce of City residents, supporting local businesses and the surrounding area; and (3) the benefits to be gained by the City as a result of the Project are greater than the costs to the City under this Agreement;

Whereas, the Developer and the City agree that the Real Estate's development and improvement shall (1) result in an economic and aesthetic benefit to the City and the surrounding area, including, without limitation, growth in the tax base and job creation; and (2) be secured for the future benefit of the citizens and the community through the construction and development of the Project all in accordance with this Agreement to be approved by the City Economic Development Commission and Common Council;

Whereas, the City desires the Project to proceed for the reasons set forth above and ultimately to provide increased tax revenues for the City and various taxing jurisdictions authorized to levy taxes within TID #6;

1679222

LACROSSE COUNTY  
REGISTER OF DEEDS  
CHERYL A. MCBRIDE

RECORDED ON  
08/02/2016 09:10AM  
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Return to

City Attorney  
400 La Crosse Street  
La Crosse WI 54601

Parcel Identification Number/Tax Key Number

17-20022-110

2016-03-014

**Whereas**, in order to induce Developer to undertake the Project, the City has agreed to pay for certain costs included in the project plan of TID #6 ("TID Project Plan") through the use of existing municipal funds to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement;

**Whereas**, the City finds and determines that certain cash grant payments and loan as detailed in this Agreement are necessary and convenient to the implementation of the TID Project Plan;

**Whereas**, Developer declares that "but for" this Agreement, it would not undertake the Project to the extent of the investment proposed;

**Whereas**, the City and Developer wish to set forth in this Agreement their respective commitments, understandings, rights and obligations in connection with the Project as more fully described herein and to further provide for the implementation of the Project; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

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## ARTICLE I

### PURPOSE; LAND; DEFINITIONS; EXHIBITS

**1.1. Land Affected.** The parties acknowledge that the Project will encompass and/or affect the following real property, all of which shall be within the boundaries of TID #6:

The Real Estate (Exhibit A) and certain public streets and rights-of-way serving the same.

**1.2. Purpose of the Agreement.** In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry and job creation and to expand and enhance the tax base and stimulate retail sales and consumer activity in the historic downtown within the City, the City intends to undertake certain project costs and public improvements, if any, necessary for the Project, all as set forth in this Agreement. The City intends to recover its costs through payments received under this Agreement including

increased tax revenues generated by the Real Estate. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed. Developer and the City plan to work together to undertake the Project on the Real Estate all as more fully described herein.

**1.3. Certain Definitions.** In addition to the words and phrases elsewhere defined in this Agreement, the following words and phrases, when having an initial capital letter, shall have the following meanings:

- a. "Agreement" means this Doerflinger's Second Century, Inc. Development Agreement by and between the City and the Developer, as amended and supplemented from time to time.
- b. "City" means the City of La Crosse, Wisconsin, a Wisconsin municipal corporation.
- c. "Construction Schedule" means the construction timetable set forth on **Exhibit F**.
- d. "Contribution" means the contribution or cash grant that is made through this Agreement to incent Developer to undertake the development and assist the Project and for which the Monetary Obligation is incurred.
- e. "Developer" means Doerflinger's Second Century, Inc., a Wisconsin corporation.
- f. INTENTIONALLY OMITTED
- g. "Monetary Obligation" means a limited and conditional monetary obligation of the Tax Increment generated from the Project in a maximum aggregate amount of ninety-eight thousand eight hundred ten dollars (\$98,810.00), that is incurred, in one or more installments, and that is payable over the time not to exceed the duration of the TID #6; more specifically:
  - (1) Calculation. Effective April 1, 2016, the City shall be obligated to pay a Contribution calculated as ninety-eight thousand eight hundred ten dollars (\$98,810.00) to Developer in accordance with the terms of this Agreement, including, without limitation Section 1.3(g)(8).
  - (2) Disbursement Date. After determining compliance with this Agreement, the City shall make its Contribution of the Monetary Obligation on or before September 1, 2017.
  - (3) Conditions. The City's obligation to make Contributions on the Monetary Obligations is conditioned on:
    - (a) The determination by the City Assessor of compliance with the tax guarantee in Section 2.6(b) of this Agreement;
    - (b) The timely payment of taxes when due by Developer;
    - (c) Substantial Completion of the Project in accordance with the Project Cost Breakdown and Construction Schedule;
    - (d) Submission by Developer of verifiable costs, invoices, lien

waivers, proof of financing costs and any other supporting documentation as requested by the Finance Director and Economic Development Commission. Said submissions shall be in form and content acceptable to the Finance Director and Economic Development Commission and demonstrate Substantial Completion and payments for costs for which reimbursement is being requested in accordance with Section 3.1 and the other provisions of this Agreement;

- (e) Continued compliance with the provisions of this Agreement by Developer and any other agreement between the Developer and City or Redevelopment Authority of the City of La Crosse, including, without limitation, a ninety-four thousand dollar (\$94,000.00) loan from the Redevelopment Authority to Developer as documented in a promissory note and secured by personal guarantee; and
  - (f) The use of Contribution for eligible project costs under the Tax Incremental Law.
- (4) Example Exhibit. An example of the Monetary Obligation is attached as Exhibit G.
  - (5) Not General Obligation. For purposes of the Tax Increment Law, this Agreement is an evidence of indebtedness; that is, it fully evidences the City's obligation to pay the Monetary Obligation. No negotiable instrument is being prepared to separately evidence the Monetary Obligation. The Monetary Obligation shall not, however, be included in the computation of the City's constitutional debt limitation, because the Monetary Obligation is limited and conditional, and no taxes have been or will be levied for its payment or pledged to its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation. No Tax Increments are pledged to the payment of the Monetary Obligation. In the event of an interpretation of this Agreement that would require the City's obligation to change from a limited and conditional obligation to that of a general obligation, then the City's Contribution and/or Monetary Obligation shall be subject to annual appropriation by the City Council.
  - (6) No Acceleration. Notwithstanding any other provision of this Agreement, Developer has no right to accelerate the payment of the Monetary Obligation. The only remedy of Developer in the event of nonpayment shall be legal proceedings to collect the amount of the Monetary Obligation that is due and payable. Developer may only institute legal proceedings after filing a claim with the City and complying with any other applicable provisions of this Agreement.
  - (7) Limitations. The City has no obligation to make payments of the Monetary Obligation in excess of the amount of the Tax Increments that have been collected, and allocated from the Project in TID #6 under the Tax Increment Law and the provisions of this Agreement. The City has

no obligation to make payments of the Monetary Obligation if this Agreement terminates. In the event Developer fails to comply with any provision of this Agreement, the City may withhold any Contribution that is due and payable and may further seek the recovery of any Contribution that has already been paid or disbursed, which shall become immediately due and payable.

- (8) Administration. The parties acknowledge and agree that the City incurs continuing administrative and professional service costs under this Agreement. Notwithstanding any provision of this Agreement, the City shall retain fifteen percent (15%) of any Contribution to be made to Developer as calculated herein to offset said costs.
- h. "Plans and Specifications" means the plans and specifications developed for the Project.
- i. "Project" means the development and improvement of the Real Estate by the constructing, refurbishing, renovating and developing the Doerflinger building as indicated and described in more detail on Exhibit B. Subject to the terms and conditions of this Agreement, uses for the Project shall be determined by zoning. The term, "Project" excludes personal property.
- j. "Project Cost Breakdown" means the minimum construction costs of the Project and consists of the cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, construction, financing, contingency and all other direct and indirect costs of construction of the Project, all as described in more detail on Exhibit E.
- k. "Public Improvements" means the public infrastructure improvements, if any, to be constructed by the City in connection with the Project set forth on Exhibit D.
- l. "Real Estate" means the real property described in Exhibit A.
- m. "Signature Date" has the same meaning as provided in Section 8.22 of this Agreement.
- n. "Substantial Completion" means the completion of the improvements to the Real Estate pursuant to the Plans and Specifications, (except for punch list items, exterior painting, and landscaping) and the issuance by the Project architect of a certificate of substantial completion and the issuance of a certificate of occupancy from the City. Subject to unavoidable delays beyond the control of the Developer, any such incomplete items shall be fully completed within a reasonable time after the date of Substantial Completion, but not to exceed ninety (90) days thereafter except site improvements such as landscaping shall be completed no later than two hundred forty (240) days after the date of Substantial Completion if weather or other conditions beyond the control of Developer prevent completion of the same.
- o. "Tax Increment" means the tax increment received by the City with respect to the Real Estate which is generated by TID #6.
- p. "Tax Incremental Law" means Section 66.1105, Wis. Stats., as amended and superseded.
- q. "TID #6" means the Tax Incremental Financing District Number 6 of the City of La Crosse.

- r. "TID Project Plan" means the plan, created in accordance with the Tax Incremental Law, for the financial development or redevelopment of TID #6, including all approved amendments thereto.

1.4. **Exhibits.** The following exhibits are hereby attached to and incorporated into this Agreement:

- a. **Exhibit A.** Real Estate
- b. **Exhibit B.** Description of Project
- c. **Exhibit C.** INTENTIONALLY OMITTED
- d. **Exhibit D.** Description of Public Improvements
- e. **Exhibit E.** Project Cost Breakdown
- f. **Exhibit F.** Construction Schedule
- g. **Exhibit G.** Monetary Obligation Example

**ARTICLE II**

**DEVELOPER OBLIGATIONS**

2.1. INTENTIONALLY OMITTED.

2.2 **Develop the Real Estate.** Developer agrees to develop and improve the Real Estate by undertaking the Project, all in accordance with this Agreement, the Project Cost Breakdown and the Construction Schedule.

- a. **Site Preparation.** Developer shall prepare the Real Estate for construction of the Project, including, without limitation, any necessary demolition or other removal of improvements or preparation currently located on the Real Estate.
- b. **Construction Schedule.** Developer shall commence or cause other entities to commence construction on the Project, as described in **Exhibit B**, on or before April 1, 2016 with Substantial Completion on or before December 31, 2016, all in accordance with the Construction Schedule set forth on **Exhibit F**.
- c. **Guaranty of Minimum Construction Costs.** Developer agrees that the building and improvements associated with the Project shall have an aggregate minimum construction cost of not less than three hundred eighty-five thousand dollars (\$385,000.00). The Project Cost Breakdown is provided on **Exhibit E**.
- d. **Rights of Access.** Developer shall permit the representatives of the City to have access to the Project at all reasonable times during and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this



Agreement including, but not limited to, access for inspection of all work being performed in connection with the Project. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Agreement.

**2.3. Local Subcontractors.** It is agreed by Developer that Developer shall engage local subcontractors, workers as well as local suppliers for material. The term subcontractor is as defined in Section 66.0901(1)(d), Wis. Stat. The word, "local," shall mean that the subcontractors and suppliers of material have their principal place of business within the City of La Crosse or within a seventy-five (75) mile radius of the City of La Crosse, Wisconsin. The Developer further agrees to provide to the City Engineer a list of all subcontractors and it further agrees that eighty percent (80%) of all work performed by subcontractors for construction shall be performed by subcontractors located within the City or seventy-five (75) miles of the City of La Crosse. In determining whether the eighty percent (80%) threshold has been met, the parties shall measure based upon the dollar values of said work. If Developer does not meet this requirement, it may request a waiver from the City Engineer providing reasons for the request of the same. This Section does not apply to fixtures, furnishings and equipment.

**2.4. Compliance with Planning and Zoning; Use.** Developer, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Project. Any conditions imposed on Developer to obtain any approval, permit or license must be acceptable to the City. Developer will not initiate, approve, consent to or participate in any change or modification of the zoning in effect for the Real Estate or any portion thereof, without the City's prior written consent. No property within the Real Estate shall be used for any use other than as set forth in this Agreement and as approved by the City, including any conditions attendant with such approval, unless such use is further approved by the City under its normal zoning, review and approval procedures.

**2.5. Maintenance and Repair.** Developer agrees that at all times after construction of the Project, it will keep and maintain the Real Estate and the Project in good condition and repair.

**2.6. Taxes.** It is understood that the land, improvements and personal property resulting from the Project shall be subject to property taxes. Developer shall pay when due all federal, state and local taxes in connection with the Real Estate and all operating expenses in connection with the Real Estate and Project.

- a. **Annual PILOT.** In the event that some or all of the Real Estate or personal property is or becomes exempt from general property taxes under Chapter 70, Wis. Stat., as amended or superseded, or by any other statute, provision or reason, then Developer shall make an annual payment to the City in lieu of taxes ("Annual PILOT") for the services, improvements or facilities furnished to the Real Estate by the City and other taxing jurisdictions. The amount of the Annual PILOT shall be computed and determined by the City Assessor by multiplying the fair market value (using tax assessment definitions, rules and procedures) of the tax exempt portion of such property by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. Developer or the then current owner of the tax exempt property, its successors or assigns shall pay the Annual PILOT within sixty (60) days of receipt. Developer shall have the right to appeal the determination of the City Assessor to the City Council. Any appeal shall specifically state the reasons, in writing, why the amount due as provided by the City Assessor is in error. The parties agree that the Annual PILOT shall survive for a period of twenty (20) years or the life of the TID #6, whichever is longer. Notwithstanding, the Developer or its successors shall not be responsible for any Annual PILOT resulting from the Real Estate or a portion thereof becoming tax exempt due to the use of eminent domain by the United States or some other governmental entity.

- b. **Guarantee.** As an additional inducement and in consideration for the City entering into this Agreement, Developer guarantees faithful performance and compliance with all the terms, covenants, conditions and obligations to be kept and performed by Developer contained in this Agreement, including, without limitation, the obligation that the Project shall have an assessed value of not less than one million eight hundred seventy thousand dollars (\$1,870,000.00) beginning in tax year 2017 and for a period of twenty (20) years or the life of TID #6, whichever is longer. Developer agrees that this minimum assessed value on the Project shall remain a lien on the Real Estate and shall run with the land for a period of twenty (20) years or the life of TID #6, whichever is longer.
- c. **Deficiency PILOT.** In the event the assessed value of the Project is less than one million eight hundred seventy thousand dollars (\$1,870,000.00) as of January 1, 2017 or for any tax year thereafter for a period of twenty (20) years or the life of TID #6, whichever is longer, then the Developer or the then current owner, or its successors or assigns agrees to pay a Deficiency PILOT to the City within sixty (60) days of receipt. Said Deficiency PILOT shall be calculated by first determining the difference between the guaranteed assessed value of the Project as provided in Section 2.6(b) of this Agreement less the actual assessed value of the Project for the tax year at issue, and multiplying said difference by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. This requirement shall be a lien running with the land for a period of twenty (20) years or the life of TID #6, whichever is longer.
- d. **Special Charge.** In the event there is a lack of compliance for payment of the Annual PILOT or Deficiency PILOT, then the City, in addition to any other remedy available at law or in equity, may levy a special charge or assessment under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property for the delinquent amount as calculated herein to enable the City to enforce performance of the Developer's obligations. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy and amount of the special charge or assessment.

## 2.7. Transfer or Sale of Real Estate.

- a. **Notice of Intent to Transfer.** No property within the Real Estate may be sold, transferred, or otherwise conveyed unless the Developer first provides to the City written notice of intent to transfer the property at least forty-five (45) days before the sale, transfer or conveyance is to occur. This Section shall not apply to nor restrict a transfer to Developer's financing entity, e.g. placing a mortgage on the Real Estate.
- b. **No Transfer to Exempt Entities.** No property within the Real Estate may be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would render any part of the Real Estate exempt from property taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement satisfactory to the City Attorney and Economic Development Commission providing for payments in lieu of taxes to the City.
- c. **Assignees and Transferees Bound by Agreement.** Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this Agreement, which shall run with the land and be binding upon all such assignees, purchasers and transferees. The Developer shall not sell or transfer any portion of the Real Estate to any entity unless and until the Developer has provided the City with written

evidence satisfactory to the City Attorney that such assignee or entity has agreed in writing to be bound by the terms of this Agreement. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve the Developer of its obligations hereunder.

- d. **Subdivision.** Property within the Real Estate shall not be further subdivided without approval of the City.

**2.8. Easements.** Developer shall grant the City or any public utility such easements as reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other need necessary to effectuate development of the Real Estate in accordance with this Agreement at no cost to the City.

**2.9. Insurance.** For a period of twenty (20) years or the life of TID #6, whichever is longer, Developer shall maintain, and shall require that any purchasers or transferees of any portion of the Real Estate maintain, insurance in such amounts and against such risks both generally and specifically with respect to the Real Estate, as are customarily insured against in developments of like size, kind and character, including customary builders risk insurance during construction and customary casualty, property and liability insurance, with deductibles in accordance with reasonable industry practice. Notwithstanding, Developer shall carry casualty insurance for the Project at not less than the replacement value and further agrees and covenants to apply, and to require any purchasers or transferees of any portion of the Real Estate to apply, any and all insurance proceeds to rebuild the Project, maintain the Project and Real Estate and to name the City as an additional insured to the extent of this covenant provided in this Section. Developer shall provide to the City certificates of all such insurance.

**2.10. Indemnity.** Developer shall indemnify and hold harmless the City, its officers, employees and authorized representatives, ("Indemnified Party"), from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs, and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of this Agreement, unless such claims, causes of action, or demands: (a) relate to the Indemnified Party failing to perform its obligations to Developer; or (b) arise out of any willful misconduct of the Indemnified Party. At the Indemnified Party's request, Developer shall appear for and defend the Indemnified Party, at Developer's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing.

**2.11. Utilities.**

- a. **Other Utilities.** Developer shall be responsible for, pay for and cause electrical power, telephone facilities, cable TV lines, and natural gas facilities to be installed in such a manner as to make proper and adequate service available to each building in the Agreement. Plans indicating the proposed location of each such utility to service the Project shall be shown on the construction plans to be provided to the City Plan Commission for approval prior to the installation of the utility.
- b. **Water and Sewer.** Developer shall be solely responsible for and shall pay all costs of connecting water and sewer service from the public streets, alley, right of way, or other approved infrastructure to the buildings within the Real Estate.

**2.12. Restrictions.** Developer agrees to neither use nor allow a third-party to use the Real Estate for adult entertainment, pawnshops, mini-warehouses, car title loan business, payday lenders, tattoo parlors, and/or off-premise signs for a period of twenty (20) years or the life of TID #6, whichever is longer. Payday lenders and car title loan businesses shall exclude banks and credit unions.

**2.13. Record Retention.** Developer understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin. As such, Developer agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years. Likewise, Developer agrees to assist the City in complying with any public records request that it receives pertaining to this Agreement. Additionally, Developer agrees to indemnify and hold the City, its officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from Developer's actions or omissions which contribute to the Indemnified Party's inability to comply with the Public Records Law. In the event Developer decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive termination of this Agreement.

**2.14. Repair and/or Replacement of Infrastructure.** Developer shall repair and/or replace any damaged City infrastructure or other City property that may occur as a result of the Project, including, without limitation, sidewalks, landscaping, asphalt and light poles. Said repair and/or replacement shall be to the satisfaction of the Board of Public Works.

### ARTICLE III

#### CITY OBLIGATIONS

**3.1. Project Assistance.** Developer has requested and the City may be required to make Contributions to Developer up to an aggregate maximum ninety-eight thousand eight hundred ten dollars (\$98,810.00) as well as fund a loan in the amount of ninety-four thousand dollars (\$94,000.00), more specifically,

- a. **Cash Grant Based on Improvements.** Developer agrees to advance funds on behalf of the City for project costs, which the City shall reimburse through Contributions under the terms of this Agreement. The Developer has requested a cash grant from TID #6 of up to an aggregate amount of ninety-eight thousand eight hundred and ten dollars (\$98,810.00), subject to change based on the provisions of this Agreement. The City shall disburse its Contribution as required by its Monetary Obligation to Developer in accordance with this Agreement.
- b. **Loan.** The Developer has requested a loan from TID #6 of up to an aggregate amount of ninety-four thousand dollars (\$94,000.00). The City shall fund the loan for the Redevelopment Authority, who will, in turn, enter into a loan agreement with Developer through separate promissory note documentation.
- c. **Illustrative Example.** An illustrative example of the payment of cash grants is attached as Exhibit G.

**3.2. Certificate of Completion.** Upon completion of the improvements by the Developer and review of the improvements by the City, the City shall provide the Developer, upon request, with an appropriate recordable instrument certifying that the improvements have been made in accordance with this Agreement and the project plans for said area and any amendment or modifications thereto.

**3.3. Assistance with Zoning Changes.** If necessary, the City Planning Department shall initiate the process in accordance with the City's zoning code to attempt to provide appropriate zoning for the property being developed by Developer so that the zoning for the development is in accordance with the City's comprehensive plan for the area.

**3.4. City Performance Subject to Required Government Approvals.** The Developer acknowledges that various of the specific undertakings of the City described in this Article III may require approvals from the City Council (and other City bodies) and other public bodies, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Article III are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain them on a timely basis.

**3.5. Subsequent Phases.** Any subsequent development of the Real Estate will be addressed in a separate development agreement.

## ARTICLE IV

### CONDITIONS PRECEDENT TO CITY OBLIGATIONS

The City's obligations under this Agreement are conditioned upon the provisions contained herein. If all conditions contained in this Article are satisfied, or if the City waives in writing said conditions, on or before December 31, 2016, then the conditions shall be deemed satisfied. Otherwise, the City, at its option, in its absolute and sole discretion, may at any time thereafter terminate this Agreement by giving notice in writing thereof to Developer. In such event, this Agreement shall be terminated and no party shall have any further liability or obligation to the other hereunder. All submissions given by Developer to the City to satisfy the conditions contained in this Article must be satisfactory in form and content to the City.

**4.1. Existence.** Developer shall have provided a certified copy of Developer's formation documents and a good standing certificate issued by the appropriate governmental authority of the state of Developer's incorporation.

**4.2. Incumbency; Due Authorization.** Developer shall have provided a certificate of incumbency and resolutions, which resolutions shall provide that Developer has been duly authorized to enter into this Agreement and all other agreements, documents and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

**4.3. No Violation or Default.** Developer shall not be in violation of any of its governing documents or other contracts. Developer shall not be in material default under the terms of any other agreement or instrument to which Developer is a party or an obligor. Developer shall be in material compliance with all provisions of this Agreement, its loan agreement and other agreements it may have with the City and Redevelopment Authority.

**4.4. Financing Commitment.** Developer shall obtain and provide to the City copies of: (1) a written financial commitment from a conventional lender, (2) written construction contract to construct and finance the Project, (3) other written proof of financial resources to construct the Project, or (4) any combination thereof. Said documents shall demonstrate sufficient funds for the construction, furnishing, equipping and installation of the Project in an amount not less than three hundred eighty-five thousand dollars (\$385,000.00). Said documents shall be acceptable in all respects to City, in the sole and absolute discretion of the Finance Director and Economic Development Commission. Developer shall have closed the loan, or be prepared to close the loan, which is the subject of the financing commitment and in connection therewith, Developer shall have provided copies of the documents to be executed in connection with the construction loan to the City.

**4.5. INTENTIONALLY OMITTED**

**4.6. INTENTIONALLY OMITTED**

**4.7. Insurance.** Developer shall have delivered to the City certificates of all insurance required under this Agreement showing the City as a named insured. Said insurance shall not be cancelled, non-renewed nor have any material changes without providing thirty (30) days advanced written notice to the City.

**4.8. Amendment of TID #6 and TID Project Plan.** The amendment of TID #6 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.

**4.9. Financial Statements.** Developer shall present (but not leave a copy) to the City's Finance Director of the most recent audited financial statements by a certified public accountant for Developer and any successors or assigns or transferees of Developer and each of the members of any of the foregoing and each member of the Board of Directors (or equivalent) of any of the foregoing. The financial statements must show a financial condition acceptable to the City, in the judgment of the City's Finance Director, to be sufficient to carry out the duties of this Agreement. The financial statements must be in form and content acceptable to the City, in the judgment of the City's Finance Director. In the event the financial statements are in unacceptable form and content, the City's Finance Director may identify alternative financial records for production by Developer.

**4.10. Approvals and Permits.** The Developer shall at its expense have obtained all necessary approvals and permits necessary to undertake the Project on the Real Estate, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

**4.11 Compliance with Law.** Developer shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

**4.12. Compliance with Agreements.** Developer shall be in compliance with this Agreement and all other agreements it may have with the City.

## ARTICLE V

### CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS

Developer's obligations under this Agreement are conditioned upon the following:

**5.1. Amendment of TID #6 and TID Project Plan.** Any amendment of TID #6 and TID Project Plan shall be approved by the appropriate governmental entities, if necessary.

## ARTICLE VI

### REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to and covenants with the City, and the City represents and warrants to and covenants with Developer as follows:

**6.1. Financial Statements / No Material Change.** All copies of financial statements, documents, contracts and agreements which Developer has furnished to the City, or its agents are true and correct. There has

been no material change in the business operations of Developer since the date of the last financial statement furnished to the City except pursuant to the conduct of its ordinary business.

**6.2. Taxes.** Developer has paid, and shall pay when due, all federal, state and local taxes, and shall promptly prepare and file returns for accrued taxes. If necessary, Developer shall pay when due all payments in lieu of taxes and special charges required under the terms of this Agreement.

**6.3. Compliance with Zoning.** Developer covenants that the Real Estate, upon completion of the Project, will conform and comply in all respects with applicable federal, state, local and other laws, rules, regulations and ordinance, including, without limitation, zoning and land division laws, building codes and environmental laws.

**6.4. Payment.** All work performed and/or materials furnished for the Project, other than the Public Improvements, shall be fully paid for by Developer.

**6.5. Certification of Facts.** No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

**6.6. Good Standing.** Developer is a corporation duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Developer is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

**6.7. Due Authorization.** The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary corporate action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally. The City represents and warrants to Developer that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by City under this Agreement.

**6.8. No Conflict.** The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's Articles of Organization or Operating Agreement or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer.

**6.9. No Litigation.** There is no litigation or proceeding pending or threatened against or affecting Developer or the Project or any guarantor that would adversely affect the Project, Developer or any guarantor or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

**6.10. Certification of Costs.** Developer covenants the Project Cost Breakdown accurately reflects all costs of the Project (other than costs associated with the Public Improvements, if any) that will be incurred by Developer in the completion and construction of the Project, and the City shall be entitled to rely on the Project Cost Breakdown submitted by Developer. Developer knows of no circumstances presently existing or reasonably likely to occur which would or could result in a material adverse variation or deviation from the Project Cost Breakdown.

**6.11. No Default.** No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.

**6.12. Fees and Commissions.** The City shall not be liable for any broker fees or commissions incurred by the Developer in connection with any transactions contemplated by this Agreement.

**6.13. Financing Accommodation.**

- a. **No Assignment.** Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber, nor will Developer, its successors, assigns or transferees agree to or permit the transfer, assignment, conveyance or encumbrance of the Project or any of the Real Estate except as provided in Sections 2.7 and 8.1 of this Agreement. The principals, shareholders, members, managers and/or partners of Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber their respective interests in Developer, its successors, assigns or transferees, as the case may be, if such anticipated transfer, assignment, conveyance or encumbrance would result in the original members of the Developer having less than majority voting control of the Developer, without providing written notification thereof to the City at least forty-five (45) days prior to the date the proposed transfer, assignment, conveyance or encumbrance is to take effect. Any attempt to so act shall be void and have no effect.
- b. **No Subordination.** The City shall not subordinate any interest it has in this Agreement for any reason, unless it is determined to be in the best interests of the City. Any requests for subordination shall be submitted, in writing, explaining why the request is in the best interests of the City. Said request shall be received by the City not less than forty-five (45) days prior to any City Council action on said request. Said subordination may only be approved by the City Council respectively.
- c. **Developer Financing.** Notwithstanding this Section 6.13, Developer may transfer, assign or encumber the Real Estate in order to secure financing for the acquisition of the Real Estate and/or for construction of the Project. Said lender may place a lien and/or mortgage on the Real Estate, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgage and/or loan may be transferred or assigned by lender in a secondary market without prior City Council approval. In the event of a foreclosure against Developer by lender or a deed transfer in lieu of foreclosure, lender shall assume the duties, obligations and rights of Developer under this Agreement. In such a circumstance, lender may transfer or assign this Agreement and its accompanying duties, obligations and rights, to another developer without prior City Council approval. In any circumstance, lender shall provide reasonable notice to City of such actions. This Section shall survive any foreclosure proceeding.

**6.14. Commencement and Completion.** Developer shall commence and complete construction of the Project in accordance with Section 2.2 above.

**6.15. INTENTIONALLY OMITTED**

**6.16. No Changes.** Developer shall not, without City's prior written consent: (i) consent to any amendments to any documents delivered to City pursuant to this Agreement; (ii) approve any changes in the Project or permit any work to be done pursuant to any changes; (iii) modify or amend the Project Cost Breakdown.



**6.17. Inspection of Project.** Developer shall permit City, its inspectors and/or its construction consultant, at all reasonable times and at no cost: (a) to inspect the Project and all matters relating to the development thereof, and (b) on reasonable notice, to inspect all of Developer's books and records pertaining to the Project. City assumes no obligation to Developer for the sufficiency or adequacy of such inspections, it being acknowledged that such inspections are made for the sole and separate benefit of City. The fact that City may make such inspections shall in no way relieve Developer from its duty to independently ascertain that the construction of the Project and Developer's compliance with this Agreement is being completed in accordance with the terms and conditions of this Agreement.

**6.18. Notification.** Developer shall:

- a. As soon as possible and in any event within five (5) business days after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Developer with respect thereto.
- b. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Developer contained in this Agreement to be untrue.
- c. Notify City and provide copies, immediately upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Developer or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Developer or any guarantor under any environmental laws, rules, regulations or ordinances or which seeks damages or civil, criminal or punitive penalties from or against Developer or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

**6.19. Unrelated Activity.** It is the intention of Developer and City that the sole business of Developer shall be the construction, ownership and operation of the Project, and Developer shall take no action inconsistent with such intention, including without limitation the acquisition by Developer of real or personal property unrelated to the Project, investment by Developer in the assets or stock of any other person, joining by Developer with any other person in any partnership or joint venture, or the creation or incurring of indebtedness by Developer unrelated to the Project.

**6.20. No Indebtedness.** Except in the ordinary course of business and except for funds borrowed to provide the financing for the purchase of the Real Estate or the construction of the Project, Developer shall not incur, create, assume, permit to exist, guarantee, endorse or otherwise become directly or indirectly or contingently responsible or liable for any indebtedness. "Indebtedness" shall mean any liability or obligation of Developer: (a) for borrowed money or for the deferred purchase price of property or services (excluding trade obligations incurred in the ordinary course of business); (b) as lessee under leases that have been or should be capitalized according to generally accepted accounting principles; (c) evidenced by notes, bonds, debentures or similar obligations; (d) under any guaranty or endorsement (other than in connection with the deposit and collection of checks in the ordinary course of business), and other contingent obligations to purchase, provide funds for payment, supply funds to invest in any entity, or otherwise assure a creditor against loss; or (e) secured by any security interest or lien on assets of Developer, whether or not the obligations secured have been assumed by Developer.

**6.21. Correction of Defects.** Developer shall, upon demand of City (and City may rely on the advice of its inspector and shall not be liable for any errors in such advice), correct any material defect, structural or otherwise, in the Project.

**6.22. Not for Speculation.** Developer represents and warrants that its undertakings pursuant to this Agreement shall be for the sole and express purpose of the redevelopment of the Real Estate consistent with the terms and conditions of this Agreement and are not for the speculation in land holdings.

## ARTICLE VII

### DEFAULT

#### 7.1 Developer's Default.

- a. **Remedies.** In the event (i) any representation or warranty of Developer herein or in any agreement or certificate delivered pursuant hereto shall prove to have been false in any material respect when made or (ii) of Developer's default hereunder which is not cured within thirty (30) days after written notice thereof to Developer, the City shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the City shall have the following specific rights and remedies:
- (1) With respect to matters that are capable of being corrected by the City, the City may at its option enter upon the Real Estate for the purpose of correcting the default and the City's reasonable costs in correcting same, plus interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City immediately upon demand;
  - (2) Injunctive relief;
  - (3) Action for specific performance;
  - (4) Action for money damages;
  - (5) Repayment by Developer of any incentives and damages via special assessment or special charge under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy of the amount of the special charge or assessment; and
- b. **Reimbursement.** Any amounts expended by the City in enforcing this Agreement and the obligations of Developer hereunder, including reasonable attorneys' fees, and any amounts expended by the City in curing a default on behalf of Developer, together with interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City upon demand and shall constitute a lien against the Real Estate until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
- c. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- d. **Failure to Enforce Not a Waiver.** Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision or any other provision in the event of a subsequent default.

## 7.2 City's Default.

- a. **Remedies.** In the event of the City's default hereunder which is not cured within sixty (60) days after written notice thereof to the City, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:
- (1) Injunctive relief;
  - (2) Action for specific performance; and
  - (3) Action for money damages.
- b. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- c. **Failure to Enforce Not a Waiver.** Failure of Developer to enforce any provision contained herein shall not be deemed a waiver of Developer's rights to enforce such provision or any other provision in the event of a subsequent default.

**7.3 Mediation of Disputes Required.** Unless the parties agree otherwise, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The parties shall split the costs of mediation equally. In the event of impasse at mediation, the aggrieved party may then commence an action. However, the parties shall be bound to agree to alternative dispute resolution as ordered by the Court.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

**8.1. Assignment.** Except as provided in Sections 2.7 and 6.13, Developer may not assign its rights or obligations under this Agreement without the prior written consent of the City. Developer shall provide not less than forty-five (45) days advance written notice of any intended assignment.

**8.2. Nondiscrimination.** In the performance of work under this Agreement, Developer agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

**8.3. No Personal Liability.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

**8.4. Force Majeure.** No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable

diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause; provided however that any such event of Force Majeure shall not be the basis of a delay of more than ninety (90) days.

**8.5. Parties and Survival of Agreement.** Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

**8.6. Implementation Schedule and Time of the Essence.** All phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum ninety (90) days. The Economic Development Commission shall otherwise oversee the day-to-day operations of this Agreement.

**8.7. Notices.** Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or (c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:                   Attn: City Clerk  
City of La Crosse  
400 La Crosse Street  
La Crosse, Wisconsin 54601

with a copy to:               Attn: City Attorney  
City of La Crosse  
400 La Crosse Street  
La Crosse, Wisconsin 54601

To the Developer:           Attn: Mr. Mike Keil  
Doerflinger Second Century, Inc.  
116 A 5<sup>th</sup> Avenue South  
La Crosse, WI 54601

**8.8. Governing Law.** This Agreement shall be governed by the laws of the State of Wisconsin and shall be deemed to have been drafted through the combined efforts of parties of equal bargaining strength. Any action at law or in equity relating to this Agreement shall be instituted exclusively in the courts of the State of Wisconsin and venued in La Crosse County. Each party waives its right to change venue.

**8.9. Conflict of Interest.** Developer shall avoid all conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. Developer is familiar with the City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Section 2-133 of the City of La Crosse Municipal Code. Developer agrees not to offer any City officer or designated employee any gift prohibited by said Code. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Developer. In addition to any other remedies the City may have in law or equity, the City may immediately terminate this Agreement for such breach. No member, officer or employee of the City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, officer or employee participate in any decision relating to this Agreement.

**8.10. Execution in Counterparts.** This Agreement may be executed in several counterparts, each which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

**8.11. Disclaimer Relationships.** Developer acknowledges and agrees that nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship or third party beneficiary, principal or agent limited or general partnership or joint venture or of any association or relationship involving the City. It is understood and agreed that Developer, in the performance of the work and services of these Project shall not act as an agent or employee of the City and neither the Developer nor its officers, employees, agents, licensees, sublicensees, subcontractors shall obtain any rights to retirement benefits or the benefits which accrue to the City's employees and Developer hereby expressly waives any claim it may have to any such rights. Each party shall be responsible for its own separate debts, obligations and other liabilities.

**8.12. Severability.** Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be in conflict with any state or federal law or otherwise be rendered unenforceable, it shall be deemed severable and shall not affect the remaining provisions, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.

**8.13. Termination.** Except for Sections 2.10 (Indemnity), 2.6(a) (Annual PILOT), 2.13 (Record Retention) and 8.5 (Survival), which shall survive the termination of this Agreement, this Agreement and all obligations hereunder, shall terminate after twenty (20) years or the life of TID #6, whichever is longer. This Agreement may also be terminated as provided in Article IV (Conditions Precedent to City), Article V (Conditions Precedent to Developer Obligations) and Section 8.9 (Conflict of Interest) hereof.

**8.14. Memorandum of Agreement.** Promptly upon its acquisition of the Real Estate and prior to the recording of any mortgage or other security instrument against any portion of the Real Estate, the Developer agrees that the City may record this Agreement, or a memorandum thereof, with the Register of Deeds for La Crosse County, Wisconsin. Any such memorandum shall be in form and substance reasonably acceptable to the City and the Developer.

**8.15. Covenants Running with Land.** All of the covenants, obligations and promises of Developer set forth herein shall be deemed to encumber and run with the Real Estate and shall bind any successor, assignee or transferee of Developer until such time as this Agreement is terminated.

**8.16. Amendments.** No agreement or understanding changing, modifying or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City and Developer.

**8.17. Time Computation.** Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

**8.18. JURY TRIAL.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY

AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

**8.19. Construction.** This Contract shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. The headings, table of contents and captions contained in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. In the event that any of the provisions, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected.

**8.20. Incorporation of Proceedings and Exhibits.** All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including but not limited to adopted or approved plans or specifications on file with the City and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Developer whether or not herein enumerated.

**8.21. Entire Agreement.** This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

**8.22. Execution of Agreement.** Developer shall sign, execute and deliver this Agreement to the City on or before the close of regular City Hall business hours forty-five (45) days after its final adoption by the City, whichever occurs later. Developer's failure to sign, execute and cause this Agreement to be received by the City within said time period shall render the Agreement null and void, unless otherwise authorized by the City. After Developer has signed, executed and delivered the Agreement, the City shall sign and execute the Agreement. The final signature date of the City shall be the signature date of Agreement ("Signature Date").

\*\*\*

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the date set forth next to the City's signature below.

Dated this 5<sup>th</sup> day of May 2016

Dated this 9<sup>th</sup> day of May, 2016

Doerflinger's Second Century, Inc. a Wisconsin Company

City of La Crosse

  
\_\_\_\_\_  
Michael R. Keil, President

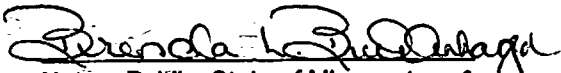
  
\_\_\_\_\_  
Timothy Kabat, Mayor

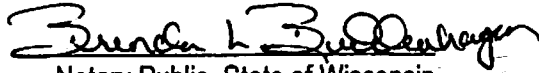
\_\_\_\_\_  
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\_\_\_\_\_  
Teri Lehrke, City Clerk

Subscribed and sworn to before me this  
5<sup>th</sup> day of May 2016.

Subscribed and sworn to before me this  
9<sup>th</sup> day of May, 2016.

  
Notary Public, State of Minnesota Brenda L. Buddenhagen  
My Commission: 11-2-18

  
Notary Public, State of Wisconsin  
My Commission: 11-2-18  
Brenda L Buddenhagen

This Document Was Drafted By:  
Stephen F. Matty, City Attorney  
City of La Crosse  
400 La Crosse Street  
La Crosse, Wisconsin 54601  
608.789.7511

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**EXHIBIT A**

**Real Estate (legal description)**

**[attached]**

## LEGAL DESCRIPTION

The Westerly 106.3 feet of Lot One (1), the Westerly 106.3 feet of the Northerly 20 feet of Lot Two (2), the Southerly 2/3 of Lot Two (2) and the Northerly 20 feet of Lot Three (3), all in Block Thirty-four (34) of the Town of La Crosse, in the City of La Crosse, La Crosse County, Wisconsin.

Also described as Lots One (1), Two (2) and Three (3) in Block Thirty-four (34) of The Town of La Crosse, in the City of La Crosse, EXCEPT the following parcels:

(1) The Northerly 80 feet of the Easterly 45 feet of said Lots 1 and 2 lying Westerly of the Westerly line of the alley in said Block 34.

(2) The Southerly 40 feet of said Lot 3.

## **EXHIBIT B**

### **Description of Project**

**Updating, refurbishing, renovating the Doerflinger Building, specifically by making HVAC improvements, removing the non-historic exterior transom, installing a new historic replication transom, constructing a new egress stairs to allow for more retail space, and installing 10,400 sq. ft. of wide plank oak floors.**

**EXHIBIT D**

**Description of Public Improvements**

**None**

**EXHIBIT E**

**Project Cost Breakdown**

**[attached]**

**Attachment 1 (page 1 of 2)**  
**DTC Build Out Estimates**  
 Landlord Responsibilities  
 1.8.16

Work	Contractor	Cost	Typical Tenant Responsibility	Proposed Conventional Financing	Proposed City Financing	Proposed City TIF Grant
<b>Primarily General Contractor:</b>						
Demo interior walls, basement stairway, flooring	A1	\$ 17,194	\$ 17,194	\$ 17,194		
Widen basement entry	A1	\$ 1,000	\$ 1,000	\$ 1,000		
Main Street entry overhang repair	A1	\$ 3,500		\$ 3,500		
Remove overhang decorative elements	LaX Sign	\$ 800		\$ 800		
First floor demising wall and new 4th Street entry	A1	\$ 4,950		\$ 4,950		
Entry structural allowance		\$ 4,000		\$ 4,000		
Demising wall doors and window	A1	\$ 1,800		\$ 1,800		
Under mezz walls		\$ 800		\$ 800		
Stairway infill	A1	\$ 1,000	\$ 1,000	\$ 1,000		
Removed stairway structural allowance		\$ 4,000	\$ 4,000	\$ 4,000		
Subfloor repair	A1	\$ 685	\$ 685	\$ 685		
New egress stairway, basement to first floor	A1	\$ 4,610	\$ 4,610			\$ 4,610
New stairway structural allowance		\$ 6,000	\$ 6,000			\$ 6,000
Steel railings allowance		\$ 1,800	\$ 1,800			\$ 1,800
Relocate AC equip for new stairway	Prime Source	\$ 6,000	\$ 6,000			
First floor and stairway drywall	A1	\$ 11,808	\$ 3,000	\$ 11,808	\$ 6,000	
New tile flooring, common area	A1	\$ 9,800		\$ 9,800		
Baseboard fab and install, common area	A1	\$ 1,350		\$ 1,350		
Basement demising wall	A1	\$ 2,275		\$ 2,275		
Demising double doors	A1	\$ 5,100		\$ 5,100		
Basement drywall	A1	\$ 3,200		\$ 3,200		
		\$ 91,672	\$ 45,289	\$ 73,262	\$ 6,000	\$ 12,410

**Attachment 1 (page 2 of 2)**

1.8.16	Work	Contractor	Cost	Typical Tenant Responsibility	Proposed Conventional Financing	Proposed City Financing	Proposed City TIF Grant
	<b>Primarily Sub-Contractors</b>						
	Asbestos abatement	IRA	\$ 5,000		\$ 5,000		
	New entry glass, common area	LaX Glass	\$ 8,220		\$ 8,220		
	New transom glass, historic replication	LaX Glass	\$ 17,800				
	Remove non-historic transom signs (allowance)	LaX Sign	\$ 1,000				
	Oak flooring 10,400SF, wide plank	AW	\$ 67,600	\$ 67,600			\$ 17,800
	HVAC Replacement DTC	Schneider	\$ 70,000	\$ 70,000	\$ 2,000	\$ 68,000	\$ 1,000
	HVAC Common Area	Schneider	\$ 20,000			\$ 20,000	
	Doerflinger signage repair	LaX Sign	\$ 1,500		\$ 1,500		
	Move electrical panel, provide deduct meter	PT	\$ 10,000	\$ 10,000	\$ 10,000		
	Common area lighting, electrical	PT	\$ 5,000		\$ 5,000		
	Security upgrade		\$ 10,000		\$ 10,000		
	First floor sprinkler modifications, common area	Ahern	\$ 2,000		\$ 2,000		
	Basement sprinkler upgrades	Ahern	\$ 11,000		\$ 11,000		
	Plumbing demo	Prime Source	\$ 800		\$ 800		
	Architect services	River	\$ 10,000		\$ 10,000		
	Permits	City	\$ 5,000		\$ 5,000		
	Application fee	City	\$ 10,000		\$ 10,000		
			\$ 254,920	\$ 147,600	\$ 80,520	\$ 88,000	\$ 86,400
	<b>Total</b>		\$ 346,592	\$ 192,889	\$ 153,782	\$ 94,000	\$ 98,810
	total conv + city + tif		\$ 346,592				

**EXHIBIT F**

**Construction Schedule**

**Commence construction of Project**

**April 1, 2016**

**Substantial completion of Project**

**December 31, 2016**



## EXHIBIT G

### Monetary Obligation

#### Scenario 1:

On January 1, 2016, the land was assessed at \$247,500. The building and improvements on the land were assessed at \$1,570,000. The total assessed value of the land and improvements was \$1,870,000. In 2016, developer completes construction of improvements. On January 1, 2017, the land is assessed at \$247,500. The building and improvements are assessed at \$1,900,000. The developer is in compliance with all other terms and conditions of its agreements with the City.

#### Conclusion 1:

In scenario 1, the developer has complied with the tax base guarantee of the development agreement. There are no defaults of any other term or condition of its development agreement or any other agreements with the City. Accordingly, the developer is entitled to receive the lump sum cash grant of \$98,810 less administrative costs in accordance with the development agreement on September 1, 2017.

	<u>Base year 2016</u>	<u>Tax guarantee for 2017</u>	<u>Actual valuation 2017</u>
Land	\$247,500		\$247,500
<u>Improvements</u>	<u>\$1,570,000</u>	\$1,870,000	<u>\$1,900,000</u>
Total assessed value	\$1,870,000		\$2,147,500
<u>Cash grant calculation</u>			
Contribution	\$98,810.00		
<u>Administration fee (15%)</u>	<u>\$14,821.50</u>		
Disbursement to developer	\$83,988.50		

Scenario 2:

On January 1, 2016, the land was assessed at \$247,500. The building and improvements on the land were assessed at \$1,570,000. The total assessed value of the land and improvements was \$1,870,000. In 2016, developer completes construction of some improvements. On January 1, 2017, the land is assessed at \$455,000. The building and improvements are assessed at \$1,700,000. The total assessed value of land and improvements on January 1, 2017 is \$2,155,000. The developer is in compliance with all other terms and conditions of its agreements with the City.

Conclusion 2:

In scenario 2, the developer has not complied with the tax base guarantee. Even though the land may have appreciated due to market conditions, the tax base guarantee from the development agreement applies only to the improvements (e.g. building) on the land. Since the improvements did not reach the amount promised in the tax guarantee, then the City would not issue any lump sum cash grant.

	<u>Base year 2016</u>	<u>Tax guarantee for 2017</u>	<u>Actual valuation 2017</u>
Land	\$247,500		\$455,000
<u>Improvements</u>	<u>\$1,570,000</u>	\$1,870,000	<u>\$1,700,000</u>
Total assessed value	\$1,870,000		\$2,155,000
	<u>PILOT calculation</u>		
Tax guarantee	\$1,870,000		
<u>Actual valuation</u>	<u>\$1,700,000</u>		
Deficiency	\$170,000		
<u>Mill rate</u>	<u>.0029</u>		
PILOT owed for 2017	\$4,930.00		

## **GUARANTY**

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The undersigned unconditionally guarantees to the **Redevelopment Authority of the City of La Crosse**, a corporation created under Wis. Stat. § 66.1333, whose address is City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601 (the "City") payment when due whether by stated maturity, demand, acceleration or otherwise, of all existing and future indebtedness to the City of **Doerflinger's Second Century, Inc.** (jointly and severally the "Borrower"), howsoever this indebtedness has been or may be incurred or evidenced, whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or unliquidated, joint and several, and whether or not known to the undersigned at the time of this Guaranty or at the time any future indebtedness is incurred (the "Indebtedness").

The Indebtedness guaranteed by this Guaranty includes without limit: (a) all Indebtedness of the Borrower to the City, including Indebtedness evidenced by any promissory notes; (b) all obligations or liabilities of the Borrower to the City arising under any guaranty where the Borrower has guaranteed the payment of Indebtedness owing to the City from a third party; (c) all obligations or liabilities of the Borrower to the City arising out of any other agreement by the Borrower, including without limit any agreement to indemnify the City for environmental liability or to clean up hazardous waste; (d) all Indebtedness, obligations or liabilities for which the Borrower would otherwise be liable to the City were it not for the invalidity, irregularity or unenforceability of them because of any bankruptcy, insolvency or other law or order of any kind; (e) all amendments, modifications, renewals and/or extensions of any of the above, including without limit amendments, modifications, renewals and/or extensions that are evidenced by new or additional instruments, documents or agreements; and (f) all costs and expenses of collecting Indebtedness, including without limit reasonable attorney fees.

The undersigned waive(s) notice of acceptance of this Guaranty and presentment, demand, protest, notice of protest, dishonor, notice of dishonor, notice of default, notice of intent to accelerate or demand payment of any Indebtedness, and diligence in collecting any Indebtedness. The undersigned agree(s) that the City may (a) modify the terms of any Indebtedness, (b) compromise, extend, increase, accelerate, or renew any or all Indebtedness, (c) forbear to enforce payment of any or all Indebtedness, or (d) permit the Borrower to incur additional Indebtedness, all without notice to the undersigned and without affecting the unconditional obligation of undersigned under this Guaranty. The undersigned further waive(s) any and all other notices to which the undersigned might otherwise be entitled. The undersigned acknowledge(s) and agree(s) that the liabilities created by this Guaranty are direct and are not conditioned upon the City's pursuit of any remedy it may have against the Borrower, any other person, or any security or collateral. The obligations of the undersigned under this Guaranty will not be affected or impaired by the invalidity, irregularity or unenforceability of any or all of the Indebtedness because of any bankruptcy, insolvency or other law or order of any kind or for any other reason. Additionally, no defense or setoff available at any time to the Borrower will be a defense or setoff to the obligations of the undersigned under this Guaranty.

The undersigned deliver(s) this Guaranty based solely on the undersigned's independent investigation of the Borrower's financial condition and the undersigned is (are) not relying on any information furnished by the City. The undersigned assume(s) full responsibility for obtaining any further information concerning the Borrower's financial condition, the status of the Indebtedness, or any other matter that the undersigned may deem necessary or appropriate from time to time. The undersigned waive(s) any duty on the City's part, and agree(s) that it is not relying upon nor expecting the City to disclose to the undersigned any fact now or later known by the City, whether relating to (a) the Borrower's operations or its conditions, (b) the existence, liabilities or financial condition of any co-guarantor of the Indebtedness, (c) the occurrence of any default with respect to the Indebtedness, or otherwise, notwithstanding any effect these facts may have upon the undersigned's risk under this Guaranty or the undersigned's rights against the City. The undersigned knowingly accept(s) the full range of risk encompassed in this

Guaranty, which risk includes without limit the possibility that the Borrower may incur Indebtedness to the City after the Borrower's financial condition or its ability to pay its debts as they mature, has deteriorated.

The undersigned represent(s) and warrant(s) that: (a) the City has made no representation to the undersigned as to the Borrower's creditworthiness; and (b) the undersigned has (have) established adequate means of obtaining from the Borrower on a continuing basis financial and other information pertaining to the Borrower's financial condition. The undersigned shall keep itself adequately informed of any facts, events or circumstances that might in any way affect the risks of the undersigned under this Guaranty.

The undersigned subordinate(s) any claim of any nature that the undersigned now or later has (have) against the Borrower to and in favor of all Indebtedness. The undersigned shall not accept payment or satisfaction of any claim that the undersigned now or later may have against the Borrower without the City's prior written consent. Should the undersigned receive any payment, distribution, security, or proceeds upon or with respect to any claim that the undersigned now or may later have against the Borrower, the undersigned shall immediately deliver the same to the City in the form received (except for endorsement or assignment by the undersigned where required by the City) for application on the Indebtedness, whether matured or unmatured. Until delivered by the undersigned, such payment, distribution, security, or proceeds will be held in trust by the undersigned as the property of the City. The undersigned further assign(s) to the City as collateral for the obligations of the undersigned under this Guaranty all claims of any nature that the undersigned now or later has (have) against the Borrower with full right on the City's part, in its own name or in the name of the undersigned, to collect and enforce these claims.

The undersigned agree(s) that no security now or later held by the City for the payment of any Indebtedness, whether from the Borrower, any guarantor, or otherwise, and whether in the nature of a security interest, pledge, lien, assignment, setoff, suretyship, guaranty, indemnity, insurance or otherwise, will affect in any manner the unconditional obligation of the undersigned under this Guaranty. The City, in its sole discretion, without notice to the undersigned, may release, exchange, enforce and otherwise deal with any security without affecting in any manner the unconditional obligation of the undersigned under this Guaranty. The undersigned acknowledge(s) and agree(s) that the City has no obligation to acquire or perfect any lien on or security interest in any asset(s), whether realty or personalty, to secure payment of the Indebtedness, and the undersigned is (are) not relying upon any assets(s) in which the City has or may have a lien or security interest for payment of the Indebtedness.

The undersigned acknowledge(s) that the effectiveness of this Guaranty is not conditional on any or all of the Indebtedness being guaranteed by anyone else.

Until the Indebtedness is irrevocably paid in full, the undersigned waive(s) any and all rights to be subrogated to the City's position or have the benefit of any lien, security interest or other guaranty now later held by the City for the Indebtedness or to enforce any remedy that the City now or later has against the Borrower or any other person. Until the Indebtedness is irrevocably paid in full, the undersigned shall have no right to reimbursement, indemnity, contribution or other right of recourse to or with respect to the Borrower or any other person. The undersigned shall indemnify and hold harmless the City from and against any and all claims, actions, damages, costs and expenses, including without limit reasonable attorney fees, incurred by the City in connection with the undersigned's exercise of any right of subrogation, contribution, indemnification or recourse with respect to this Guaranty. The City has no duty to enforce or protect any rights which the undersigned may have against the Borrower or any other person and the undersigned assume(s) full responsibility for enforcing and protecting these rights.

Notwithstanding any provision of the preceding paragraph or anything else in this Guaranty to the contrary, if any of the undersigned is or becomes an "insider" or "affiliate" (as defined in Section 101 of the United States Bankruptcy Code ( 11 U.S.C. §101 et seq.), as it may be amended (the "Bankruptcy Code")) with respect to the Borrower, then that undersigned irrevocably and absolutely waives any and all rights of subrogation, contribution, indemnification, recourse, reimbursement and any similar rights against the Borrower (or any other guarantor) with respect to this Guaranty, whether such rights arise under an express or implied contract or by operation of law. It is the intention of the parties that the undersigned shall not be (or be deemed to be) a "creditor" (as defined in Section 101 of the Bankruptcy Code) of the Borrower (or any other guarantor) by reason of the existence of this Guaranty in the event that the Borrower becomes a debtor in any proceeding under the Bankruptcy Code. This waiver is given to induce the City to enter into certain written contracts with the Borrower included in the Indebtedness. The undersigned warrant(s) and agree(s) that none of the City's rights, remedies or interests will be impaired directly or indirectly because of any of the undersigned's status as an "insider" of the Borrower, and the undersigned shall take any action and shall execute any document that the City may request in order to effectuate this warranty to the City.

If two or more guarantors guarantee any Indebtedness, the obligation of the undersigned will be several and also joint. The City may enforce this Guaranty against each of the undersigned severally, any two or more jointly, or some severally and/or some jointly. The City, in its sole discretion, may release any one or more of the guarantors for any consideration which the City deems adequate. The City may fail or choose not to prove a claim against the estate of any bankrupt, insolvent, incompetent, or deceased guarantor; and after failing or choosing not to prove a claim, and without notice to any other guarantor, the City may extend or renew any or all Indebtedness and may permit the Borrower to incur additional Indebtedness without affecting the unconditional obligation of the remaining guarantor(s). However, such action by the City will not be deemed to affect any right to contribution that may exist among the guarantors.

Any of the undersigned may terminate their obligation under this Guaranty as to future Indebtedness (except as provided below) by (a) delivering written notice of termination to the City and (b) receiving from the City Clerk, 400 La Crosse Street, La Crosse, Wisconsin, 54601, of the City written acknowledgement of delivery. The termination will not be effective until the 45<sup>th</sup> day following the City's written acknowledgement of delivery (the "Termination Date"). Any termination will not affect in any way the terminating guarantor's unconditional obligations as to (a) any Indebtedness existing at the Termination Date, which includes any modifications, extensions or renewals of such existing Indebtedness and (b) any Indebtedness created after the Termination Date if that Indebtedness was created pursuant to any commitment or agreement of the City that existed as of Termination Date. The terminating guarantor shall remain obligated for such existing and/or committed Indebtedness of Borrower until fully and irrevocably paid to the City.

Any guarantor termination will not affect the unconditional obligations of the remaining guarantor(s) regardless of whether or not the remaining guarantors knew of the termination. The City has no duty to give notice of termination by any guarantor(s) to any remaining guarantor(s). In the event that the Borrower sues, makes a claim, or files an action against the City because the City modifies or terminates the Indebtedness or refuses to extend additional credit to the Borrower following any guarantor termination, the undersigned (including the terminating guarantor) shall indemnify and hold harmless the City against all claims, damages, costs and expenses, including without limit reasonable attorney fees related to such suit, claim or action.

Notwithstanding any prior revocation, termination, surrender or discharge of this Guaranty (or of any lien, pledge or security interest securing this Guaranty) in whole or in part, the effectiveness of this Guaranty, and all liens, pledges and security interests securing this Guaranty, will automatically continue or be

reinstated, as the case may be, in the event that (a) any payment received or credit given by the City in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of funds or otherwise under any applicable state or federal law, including without limit, laws pertaining to bankruptcy or insolvency, in which case this Guaranty, and all liens, pledges and security interests securing this Guaranty will be enforceable against the undersigned as if the returned, disgorged or rescinded payment or credit had not been received or given by the City, and whether or not the City relied upon this payment or credit or changed its position as a consequence of it; or (b) any liability is imposed, or sought to be imposed against the City relating to the environmental condition of, or the presence of hazardous or toxic substances on, in or about, any property given as collateral to the City by the Borrower, whether this condition is known or unknown, now exists or later arises (excluding only conditions caused by the wrongful act or omission of the City after it acquires such property (foreclosure, in lieu of foreclosure or otherwise)), in which case this Guaranty, and all liens, pledges and security interests securing this Guaranty will be enforceable against the undersigned to the extent of all liability, costs and expenses (including without limit reasonable attorney fees) incurred by the City as the direct or indirect result of any environmental condition or hazardous or toxic substances. In the event of continuation or reinstatement of this Guaranty and the liens, pledges and security interests securing it, the undersigned agree(s) upon demand by the City to execute and deliver to the City those documents that the City determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of the undersigned to do will not affect in any way the reinstatement or continuation. If the undersigned do(es) not execute and deliver to the City upon demand such documents, the City and each City official or employee is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of the undersigned (with full power of substitution) to execute and deliver such documents in the name and on behalf of the undersigned. For purposes of this Guaranty, "environmental condition" includes without limitation, conditions existing with respect to the surface or ground water, drinking water supply, land surfaces or subsurfaces and the air; and "hazardous or toxic substances" will include any and all substances now or later determined by any federal, state or local authority to be hazardous or toxic, or otherwise regulated by any of these authorities.

The undersigned further agree(s) that, with respect to the limitation, if any, stated in the Additional Provisions below on the amount of principal guaranteed under the Guaranty, (a) the limitation will not limit the amount of the Borrower's Indebtedness to the City; (b) any payments by the undersigned will not reduce the maximum liability of the undersigned under this Guaranty; and (c) the liability of the undersigned to the City will at all times be deemed to be the aggregate liability of the undersigned under this Guaranty and any other guaranties previously or later given to the City by the undersigned and not expressly revoked, modified or invalidated in writing.

The undersigned waive(s) any right to require the City to: (a) proceed against any person, including without limit the Borrower; (b) proceed against or exhaust any security or collateral provided by the Borrower or any other person; (c) give notice of the terms, time and place of any public or private sale of personal property security held from the Borrower or any other person or otherwise comply with the provisions of revised Article 9 of the Uniform Commercial Code as adopted by Wisconsin or other applicable jurisdiction; (d) pursue any other remedy in the City's power; or (e) make any presentments or demands for performance, or give any notices of nonperformance, protests, notices of protest, or notices of dishonor in connection with any other obligations or evidences of Indebtedness held by the City as security, or in connection with any other obligations or evidences of Indebtedness that constitute in whole or in part Indebtedness or in connection with the creation of new or additional Indebtedness.

The undersigned authorize(s) the City, either before or after termination of this Guaranty, without notice to or demand on the undersigned and without affecting the undersigned's liability under this Guaranty, from time to time to: (a) apply any security and direct the order or manner of sale of it, including without

limit a non-judicial sale permitted by the terms of the controlling security agreement, mortgage or deed of trust, as the City in its discretion may determine; (b) release or substitute any one or more of the endorsers or any other guarantors of the Indebtedness; and (c) apply payments received by the City from the Borrower to any Indebtedness of the Borrower to the City, in such order as the City will determine in its sole discretion, whether or not this Indebtedness is covered by this Guaranty, and the undersigned waive(s) any provision of law regarding application of payments which specifies otherwise. The City may without notice assign this Guaranty in whole or in part. Upon the City's request, the undersigned agree(s) to provide to the City copies of the undersigned's financial statements and filed federal income tax returns.

The undersigned waive(s) any defense based upon or arising by reason of (a) any disability or other defense of the Borrower or any other person; (b) the cessation or limitation from any cause whatsoever, other than final and irrevocable payment in full, of the Indebtedness; (c) any lack of authority of any officer, director, member, partner, agent or other person acting or purporting to act on behalf of the Borrower which is a corporation, limited liability company, partnership or other type of entity, or any defect in the Borrower's formation; (d) the application by the Borrower of the proceeds of any Indebtedness for purposes other than those purposes represented by the Borrower to the City or intended or understood by the City or the undersigned; (e) any act or omission by the City that directly or indirectly results in or aids the discharge of the Borrower or any Indebtedness by operation of law or otherwise; or (f) any modification of the Indebtedness in any form whatsoever, including without limit any modification made after effective termination, and including without limit, renewal, extension, acceleration, or other change in time for payment of the Indebtedness, or other change in the terms of the Indebtedness, including without limit increase or decrease of the interest rate. The undersigned waive(s) any defense the undersigned may have based upon any election of remedies by the City which destroys the undersigned's subrogation rights or the undersigned's right to proceed against the Borrower for reimbursement, including without limit any loss of rights the undersigned may suffer by reason of any rights, powers or remedies of the Borrower in connection with any anti-deficiency, appraisal or valuation laws or any other laws limiting, qualifying or discharging any Indebtedness.

The undersigned acknowledge(s) that the City has the right to sell, assign, transfer, negotiate, or grant participations in all or any part of the Indebtedness and any related obligations, including without limit this Guaranty. In connection with exercise of that right, the City may disclose any documents and information that the City now or later acquires relating to the undersigned and this Guaranty, whether furnished by the Borrower, the undersigned or otherwise. The undersigned further agree(s) that the City may disclose these document and information to the Borrower.

The total obligation under this Guaranty shall be **UNLIMITED** unless specifically limited in the Additional Provisions of this Guaranty and this obligation (whether unlimited or limited to the extent indicated in the Additional Provisions) will include, **IN ADDITION TO** any limited amount of principal guaranteed, any and all interest on all Indebtedness and any and all costs and expenses of any kind, including without limit reasonable attorney fees, incurred by the City at any time(s) for any reason in enforcing any of the duties connected with this Guaranty, the Indebtedness or any other guaranty of the Indebtedness (including without limit reasonable attorney fees and other expenses incurred in any suit involving the conduct of the City, the Borrower or the undersigned). All of these costs and expenses will be payable immediately by the undersigned when incurred by the City, without demand, and until paid will bear interest at the highest per annum rate applicable to the Indebtedness, but not in excess of the maximum rate permitted by law. Any reference in this Guaranty to attorney fees will be deemed a reference to fees, charges, costs and expenses of both the City's attorneys and outside counsel and paralegals, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorney fees or court costs are incurred at the trial court level, in a bankruptcy, arbitration, administrative or probate proceeding, or otherwise. Any reference in the Additional Provisions or

elsewhere (a) to this Guaranty being secured by certain collateral will NOT be deemed to limit the total obligation of the undersigned under this Guaranty or (b) to this Guaranty being limited in any respect will NOT be deemed to limit the total obligation of the undersigned under any prior or later guaranty given by the undersigned to the City.

The undersigned unconditionally and irrevocably waive(s) each and every defense and setoff of any nature that, under the principles of guaranty or otherwise, would operate to impair or diminish in any way the obligation of the undersigned under this Guaranty, and acknowledge(s) that each such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from the undersigned now or later securing this Guaranty and/or the Indebtedness., and acknowledge(s) that the effectiveness of this Guaranty is subject to no conditions of any kind.

This Guaranty will remain effective with respect to successive transactions which will either continues the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, until this Guaranty is terminated in the manner and to the extent provided above.

The undersigned warrant(s) and agree(s) that each of the waivers set forth are made with the undersigned's full knowledge of their significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of these waivers are determined to be contrary to applicable public policy or law, these waivers will be effective only to the extent permitted by law.

This Guaranty constitutes the entire agreement of the undersigned and the City with respect to the subject matter of this Guaranty. No waiver, consent, modification or change of the terms of this Guaranty will bind any of the undersigned or the City unless in writing and signed by the waiving party or an authorized officer of the waiving party., and then this waiver, consent, modification or change will be effective only in the specific instance and to for the specific purpose given. This Guaranty will inure to the benefit of the City and its successors and assigns. This Guaranty will be binding on the undersigned and the undersigned's heirs, legal representatives, successors and assigns, including without limit any debtor in possession or trustee in bankruptcy for any of the undersigned. The undersigned has (have) knowingly and voluntarily entered into this Guaranty in good faith for the purpose of inducing the City to extend credit or make other financial accommodations to the Borrower, and the undersigned acknowledge(s) that the terms of this Guaranty are reasonable. If any provision of this Guaranty is unenforceable in whole or in part for any reason, the remaining provisions will continue to be effective.

**ADDITIONAL PROVISIONS:**

None



**THIS GUARANTY WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN. THE UNDERSIGNED AND THE CITY EXPRESSLY AGREE TO (a) BE SUBJECT TO THE PERSONAL JURISDICTION OF THE STATE OF WISCONSIN, (b) ACCEPT VENUE IN ANY FEDERAL OR STATE COURT IN LA CROSSE COUNTY, WISCONSIN, AND (c) WAIVE ANY RIGHT TO TRIAL BY JURY**

The undersigned has (have) signed this Guaranty on \_\_\_\_\_, 2016.

GUARANTOR: Michael R. Keil  
TYPE/PRINT NAME OF ENTITY IF APPLICABLE

By: 

Its: \_\_\_\_\_

GUARANTOR'S ADDRESS:

116 A Fifth Avenue South  
STREET ADDRESS

La Crosse                      WI                      54601  
CITY                                      STATE                                      ZIP CODE

608-386-4537                                      mr.mrkeil@gmail.com  
TELEPHONE                                      E-MAIL

GUARANTOR: Karen Keil  
TYPE/PRINT NAME OF ENTITY IF APPLICABLE

By: 

Its: \_\_\_\_\_

GUARANTOR'S ADDRESS:

116 A Fifth Avenue South  
STREET ADDRESS

La Crosse                      WI                      54601  
CITY                                      STATE                                      ZIP CODE

608-386-4537                                      mr.mrkeil@gmail.com  
TELEPHONE                                      E-MAIL